

## **REMARKS**

### **Claim status**

Claims 1-6, 8, 14-18, and 26-32 were pending in the case at the time of the current Office Action. Claim 1 is currently amended herein. New claim 33 is added herein. No new matter has been added. Claims 1-6, 8, 14-18, and 26-33 are currently pending in the application. There are a total of 20 claims currently pending in the application.

### **Information Disclosure Statement**

The Applicants wish to bring to the Examiner's attention a supplemental IDS which was electronically filed on 6/2/06 based on a European search report.

Applicants respectfully request that the Examiner consider the references in this IDS.

### **Section 102 rejections**

In the current Office action, claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Kleks et al. (USPN 5,417,718).

Applicants respectfully traverse the foregoing rejection in view of the above pending claims and for reasons set forth hereafter.

Independent claim 1 recites a stimulation arrangement, comprising:

a stimulation unit to deliver electrical stimulation pulses for stimulating body tissue; and  
an evaluation unit to receive at least one electrical signal in conjunction with the delivery of a stimulation pulse and to evaluate said received electrical signal for checking both stimulation success and lack of stimulation success, and wherein the evaluation unit is capable of detecting first signal features in the received electrical signal that characterize a case of lack of stimulation success, and delivering a corresponding first output signal, and wherein the evaluation unit is capable of detecting second signal features in the received electrical signal that characterize a case of stimulation success, and delivering a corresponding second output signal.

It is respectfully submitted that Kleks et al. (USPN 5,417,718), hereinafter Kleks, does not teach or suggest the claimed invention. In particular, Kleks does teach or suggest evaluating a received electrical signal for checking both stimulation success and lack of stimulation success, and wherein the evaluation unit is capable of detecting first signal features in the received electrical signal that characterize a case of lack of stimulation success, and delivering a corresponding first output signal, and wherein the evaluation unit is capable of detecting second signal features in the received electrical signal that characterize a case of stimulation success, and delivering a corresponding second output signal.

Kleks, as stated in the Abstract, has to “presume” that capture has not occurred. That is, if Kleks does not detect a prescribed difference between the received signal and the polarization template indicating that capture has occurred, then Kleks can only “presume” that capture has not occurred. This leaves open the possibility that capture may have actually occurred, but Kleks has to presume that it did not occur because the prescribed difference was not detected. Such an approach is not very robust.

However, the claimed invention of claim 1 is not simply looking for positive evidence in the received signal that capture has occurred and, if this positive evidence is not present, presuming that capture has not occurred. Instead, the claimed invention of claim 1 actually looks for separate and distinct positive evidence that capture has not occurred and does not just presume based on a lack of evidence for the opposite condition (i.e., that capture has occurred).

In the claimed invention of claim 1, two distinct type of signal features are looked for:

1. those signal features indicating lack of stimulation success (test 1)
2. those signal features indicating stimulation success (test 2)

The claimed invention of claim 1 generates a capture signal based on the detection of first certain signal features, and generates a non-capture signal based on the detection of second certain signal features.

Kleks only looks for an indication of capture success and has to presume non-capture if this indication is not found.

As a result, the claimed invention of claim 1 is more robust than Kleks because the claimed invention of claim 1 has two ways of looking for evidence (i.e., capture features and

non-capture features). In the claimed invention of claim 1, a presumption of the opposite condition does not have to be made.

Therefore, in view of at least the foregoing, it is respectfully submitted that claim 1 is neither anticipated nor rendered obvious, and it is respectfully submitted that claim 1 now defines allowable subject matter. Also, since claim 2 depends directly from claim 1, it is respectfully submitted that claim 2 defines allowable subject matter as well. Applicants respectfully request that the rejection of claims 1-2 under 35 U.S.C. 102(b) be removed.

### **Section 103 rejections**

In the current Office action, claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kleks.

Applicants respectfully traverse the foregoing rejection in view of the above pending claims and for reasons set forth hereafter.

As described previously, Kleks does not teach or suggest the invention of independent claim 1 and it was submitted that claim 1 defines allowable subject matter. Therefore, detecting a negative sample value in combination with claim 1 does not teach or suggest the invention of claims 14 and 15 which are dependent, either directly or indirectly, on claim 1. Since claims 14-15 are dependent, either directly or indirectly, from claim 1, it is respectfully submitted that claims 14-15 define allowable subject matter as well. Applicants respectfully request that the rejection of claims 14-15 under 35 U.S.C. 103(a) be removed.

### **Allowable Subject Matter**

Applicants thankfully acknowledge the Examiners assertion that claims 3-6, 8, 16-18, and 26-32 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, even though Applicants believe and have argued herein that independent claim 1 is allowable on its own.

New independent claim 33 has been added herein which incorporates claim 2 and claim 3 into claim 1. Therefore, according to the Examiner, new independent claim 33 should be allowable.

Accordingly, the applicant respectfully requests reconsideration of the rejections based on the arguments made above. After such reconsideration, it is urged that allowance of all claims will be in order.

Respectfully submitted,



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